

IN THE
United States
Court of Appeals
For the Ninth Circuit

OSCAR A. MIRANDA, also
known as Oscar Miranda Arteche,
Appellant,

vs.

TOM C. CLARK, Attorney General
of the United States, UGO
CARUSI, United States Commissioner
of Immigration, and
WILLIAM I. CRANE, Officer
in charge of Port of San Luis,
Arizona,

Appellees.

Upon Appeal from the United States District Court for
the District of Arizona.

BRIEF FOR APPELLEES

FRANK E. FLYNN,
*United States Attorney for the
District of Arizona.*

DON HUMMEL,
Assistant U. S. Attorney

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STATEMENT OF CASE

This is an appeal from a judgment in a suit instituted against Tom Clark, Attorney General of the United States, Ugo Carusi, United States Commissioner of Immigration, and William I. Crane, Officer in Charge of Port of San Luis, Arizona.

The judgment revoked an order theretofore entered restraining the arrest and deportation of appellant, and also declared that the appellant was by reason of forfeiture no longer a citizen of the United States (T.R. 19).

The statement of facts in appellant's brief correctly reflects the agreed statement of facts filed in this case (T.R. 12).

QUESTION PRESENTED

The question is stated in appellant's brief as follows:

"Whether plaintiff, who was born in the United States and taken during his minority to the country of his parents' origin and who became subject to a dual nationality, can expatriate himself by voting in a primary local election during his minority." (Appellant's Brief Page 3).

To correctly state the question presented, we believe that the last three words, "during his minority," should be changed to read, "after reaching the age of eighteen but prior to reaching his majority." (Appellant's Brief page 5, T. R. 13).

STATUTES INVOLVED

The following sections from the Nationality Act of 1940:

Title 8, U.S.C.A. Section 801, the applicable parts of which are as follows:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(e) Voting in a political election in a foreign state * * * ."

Title 8, U.S.C.A. Section 803(b):

"No national under eighteen years of age can

expatriate himself under sub-section (b) to (g) inclusive, of Section 801."

ARGUMENT

From the foregoing statutes, we see that the age under which persons cannot expatriate themselves was reduced to eighteen years by the Nationality Act of 1940 (Title 8, U.S.C.A. Section 803(b)).

It is a natural and reasonable interpretation of Section 803(b), quoted above, to say that a national over the age of eighteen can expatriate himself.

Prior to the passage of this act in 1940, voting in a foreign political election was not an act of expatriation. In the case of *Attorney General of the United States v. Ricketts*, 165 F. (2d) 193, cited in appellant's brief, the act committed by Ricketts and his return to the United States occurred prior to the passage of the 1940 Nationality Act, therefore the case is not in point.

The opinion of the Supreme Court of the United States in *Perkins v. Elg*, 307 U. S. 325, cited by appellant, was rendered May 29, 1939. In that case the Supreme Court said:

"To cause a loss of that citizenship in the absence of treaty or statute having that effect, there *must be voluntary action*, and such action cannot be attributed to an infant whose removal to another country is beyond his control and who, during his minority, is incapable of binding choice."

Section 801(a) and (e) were enacted after the opinion in the *Perkins v. Elg* case. The purpose of this act was to clarify the law and to specify a definite method of terminating dual citizenship and electing United States nationality by acquiring permanent residence in the United States prior to attaining the age of twenty-three.

Sub-division (a) of Section 801, which provides that a person who has acquired foreign nationality through the expatriation of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad, and if he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted, within two years from the effective date of this chapter, to return to the United States and it shall be thereafter deemed that he has elected to be an American citizen. The phrase in this statute, “ * * * has not heretofore expatriated himself as an American citizen by his own voluntary act * * *”, is very significant when read in connection with Section 803(b), above quoted.

In view of the fact that the cases cited by appellant were all decided prior to the passage of the Nationality Act of 1940, we have not deemed it necessary to make a lengthy analysis of those cases.

SUMMARY

The statutes quoted above govern the present case. A national above the age of eighteen can expatriate himself by his own voluntary act. The appellant, Oscar A. Miranda, expatriated himself by his own voluntary act when he voted at the contested political election in April of 1946 when he was twenty years of age.

We respectfully submit that the judgment of the District Court should be affirmed.

Respectfully submitted,

FRANK E. FLYNN,
*United States Attorney for the
District of Arizona.*

DON HUMMEL,
*Assistant U. S. Attorney
Attorneys for Appellees.*